83-380

No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN WATERS

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

Writ of Habeas Corpus Title 28 U.S.C. 2255
The United States Court of Appeals for the Second Circuit

John Waters 13919-053
Pro Se
P.O. Box 900 G-Unit
Raybrook, New York 12977-0300

QUESTIONS PRESENTED

I. Is Petitioner's case meritless under Title 28 U.S.C. Subsection 2255

II. Does Presence at the scene of a narcotic transaction make one a co-conspirator, and is that sufficient evidence to make petitioner a co-conspirator.

III. Telephone calls to petitioner's place of business and to petitioner's girlfriends house by alleged co-conspirator, Is that sufficient evidence to make petitioner a co-conspirator.

IV. Was the government in violation of the Hearsay Rule by submitting a statement by an alleged co-conspirator which proved to be insufficient and did it violate the confrontation right of the petitioner.

V. Is petitioner's special parole term in accordance to 21 U.S.C. 841(a) for first offenders.

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continued (over)

JURISDICTION

This court has jurisdiction to hear this case under Title 28 U.S.C. Subsection 2255.

STATEMENT OF FACTS

Indictment 80 Cr. 72, filed in the Southern District of New York on February 7, 1980, charged five individuals, among them petitioner, with conspiracy to violate the Federal narcotics law and with various individual substantive narcotics offenses. Count one charged all five defendants with conspiracy to distribute during the period beginning May 1, 1979 up to and including February 7, 1980. Count four charged defendant Petitioner along with co-defendants George Brantley and Natalie Rice with possession of heroin with intent to distribute it on January 11, 1980.

While petitioner is named generally in the preamble to count one as one of the alleged members of the overall conspiracy, the only overt act in which he is named is paragraph 11, in which he is alledged to have met with the other defendants to sell one eighth kilogram of heroin on one occassion January 11, 1980. Similarily, in count four, the only substantive count in which he is named, Petitioner is charged with possession of heroin involving one transaction on January 11, 1980. Petitioner was not charged with involvement in any other narcotics related transactions except the single incident occurring on January 11, 1980.

Trial commenced as to Petitioner Waters and Brantley before the Honorable Lee P. Gagliardi, J., and jury on May 12, 1980. On May 19, 1980 the jury returned a verdict of guilty as to Petitioner Count 1 and 4 and Brantley Count 1,3, and 4.

PROOF ADDUCED AT TRIAL

The investigation which culminated in the instant indictment commenced in May 1979 when George Williams, a special agent of the Drug Enforcement Administration acting in his undercover capacity, met with co-defendants Archie Phillips and Natalie Rice for the ostensible purpose of arranging introductions for Williams to people in the drug business to whom he could sell quinine and mannite (pharmacologic cutting agents for narcotics). Agent Williams had previously worked with Phillips, with Williams providing the "cut" and Phillips supplying the introductions to narcotics sellers.

Phillips, a low level street dealer, provided Williams an introduction to Natalie Rice and the three met early in May 1979 to discuss the possibility of Williams arranging the sale of large quantities of quinine. At these conversations, Rice and Phillips are purported to have said that "the man at the garage" was someone who had been interested in purchasing quinine. Phillips later referred to the "man at the garage" Sugar.

In subsequent discussions over the first half of May 1979, special agent Williams attempted to negotiate with Rice and Phillips the sale of large quantities of quinine

and mannite as well as the purchase of ¼ or 1/8 kilogram of heroin. Throughout these various negotiations, Rice and Phillips referred to the man at the garage and Sugar as a large scale dealer in heroin who would be wanting the quinine and mannite, however, they wouldn't identify him or allow agent Williams to deal with him directly. Ultimately, however, these negotiations came to naught and no narcotics transactions were ever consumated in May 1979.

During the ensuing months of 1979, Agent Williams kept up his efforts to arrange narcotics deals with Phillips and Rice, eventually, Rice and her boyfriend Joseph Robinson arranged for two separate heroin transactions, each of approximately 1/8 kilogram of heroin.

Over the months, Phillips described to Agent Williams various persons who were narcotics dealers to whom he could introduce him. Phillips described the overall boss variously as a man who had known him since he (Phillips) was a child and, on another occassion, as a West Indian. Nothing more, however, was seen or heard about "the man in the garage" or "Sugar".

In early January 1980, Agent Williams accidentally ran across George Brantley, whom he had earlier met before at Rice's apartment in the Summer of 1979. The two men

discussed a potential transaction for a quantity of pure heroin. After several later telephone conversations with Brantley and Rice, the terms of the transaction were set. 1/8 kilogram of pure heroin to be sold to Agent Williams for 50 pounds of quinine and $70,000. The transaction was to consumated on January 10 or 11, 1980.

On the morning of January 11, 1980, Agent Williams, accompanied by undercover agents Robert Baker and Lorraine Coleman arrived at the Rice's apartment where they met Rice, Brantley and Deborah Smith, a friend of Ms. Rice. After exiting the apartment to retrieve the quinine from Agent Baker, who remained in the car, Agent Williams saw petitioner Waters for the first time standing on the curb near Ms. Smith's car. As he retrieved the quinine, Agent Williams saw petitioner enter the building.

Upon returning to the building, Agent Williams was met in the hallway by defendant Brantley, who directed him to place the quinine in the bathroom in the first floor hallway, outside Ms. Rice's apartment. The quinine was placed in the bathtub and after he exited the bathroom, Brantley placed a padlock on the bathroom door. After some further negotiations in the hallway and outside the building concerning the mechanics of exchanging the money for the drugs,

Agent Williams and Coleman returned to the Rice apartment with the money in a shoulder bag.

Inside the Rice apartment on this occassion were Brantley, Rice and, for the first time, Waters. Upon Williams, Baker and Coleman entering the apartment, petitioner immediately asked to leave by Brantley and the two of them proceeded outside to the hallway where they were joined by Ms. Smith. At this juncture, with petitioner outside in the hallway, Brantley and Rice began counting the money the agents had brought and they started to gaggle over how the drug transfer was to be accomplished. Brantley took the money initially and was stopped by Agent Baker who wasn't about to let him leave the apartment with it. Eventually, it was agreed that Agent Coleman would go with Ms. Rice, down to the street to pick up the package. Thereupon, Rice, accompanied by Agents Coleman and Baker left the apartment to retrieve the package while Agent Williams remained with Brantley.

In the interim, while waiting for the three to return, Agent Williams observed that the bathroom door was ajar with someone obviously inside. They subsequently returned to the apartment to await their companions' return. Within about five minutes thereafter, the trio returned and upon a prearranged signal, the three agents arrested Rice

and Brantley.

Thereupon, after securing their arrestees, Agent Williams looked inside the bathroom and discovered petitioner with his pants open and the commode down. The quinine was also observed to be in the bathtub where it had originally been placed (the blanket under which it originally had been placed was slightly ajar) and a brown paper bag was also observed on the floor several feet from petitioner. The brown paper bag was subsequently found to contain heroin. Petitioner was immediately placed under arrest.

After arrest, Petitioner stated, in the course of debriefing, that while he was admittedly the owner of the PFP Garage, located at 275 St. Nicholas Avenue, and had the nickname "Sugar", he had no knowledge or involvement in the narcotics transaction in the Rice apartment, having been present by virtue of having accompanied his girlfried Debby Smith, who was there to visit Natalie Rice. Petitioner's statement was supported by defendant Brantley, who, in his post-arrest statement to an assistant United States Attorney, stated inter alia, that Petitioner had not been involved in any deals with him exonerating Petitioner of any involvement in the morning's transactions.

I. IS PETITIONER'S CASE MERITLESS UNDER TITLE 28 U.S.S. SUBSECTION 2255

Petitioner states that his case has merit, on direct appeals from conviction the second circuit on October 28, 1980. affirmed petitioner's case stating that it was meritless, and March 23, 1981, the United States Supreme Court denied Writ of Certiorari.

Petitioner filed a 2255 motion to the District Court for the Southern District of New York on June 9, 1982, which was denied as meritless on September 14, 1982 by Judge Gagliardi.

Petitioner appealed the District Court's decision to the Court of Appeals in the second circuit October 24, 1982 and on March 14, 1983, the Court of Appeals for the second circuit denied petitioner's petition stating that it was meritless.

Petitioner filed for rehearing en banc under rule 35 within the required time and was denied April 14, 1983, in accordance with the March 14, 1983 Appeal.

Petitioner now filed his case to the Court stated herein pursuant to 28 U.S.C. Subsection 2255(1), which states, by a person in custody pursuant to a judgement of that court for a determination that the judgement was imposed in violation of the constitution or laws of the United

States, or that the court was without jurisdiction to impose such judgement, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack.

Petitioner states that the United States Supreme Court has render precedents in like of petitioner's case, which gives this court the jurisdiction to hear petitioner's case, and rule in accordance to the case at bar.

Petitioner cites Kaufman vs. United States, 394 U.S. 230,231, it states, this difference provides no basis for limiting the grounds upon which federal prisoners may obtain collateral relief, or for formulating a separate set of rules to determine when a federal prisoner's claim has adequately been adjudicated. Where a federal trial or appellate court has had a "say" on a federal prisioner's claim, there may be no need for collateral relitigation. But what if the federal trial or appellate court said nothing because the issue was not raised? What if it is unclear whether the "say" was on merits? What if a new law has been passed or fact uncovered relating to the constitutional claim since the trial and appeal? What if the trial or appellate court based its rulings on findings of facts made after a hearing not full and fair within the meaning of Townsend vs. Sain, 372 U.S. 293.

All of these problems are common to state and federal prisioners, and the interest in finality operates equally in both situations. These problems raise not the issue whether relitigation is necessary, but whether one adequate litigation has been afforded. Petitioner states that his case has merit, which will be proven herein.

II. DOES PRESENCE AT THE SCENE OF A NARCOTIC TRANSACTION MAKE ONE A CO-CONSPIRATOR, AND IS THAT SUFFICIENT EVIDENCE TO MAKE PETITIONER A CO-CONSPIRATOR.

Petitioner states mere presence at the scene of a narcotic transaction didn't make him a co-conspirator of Rice and Brantley. United States vs. Gainey 380 U.S. 63, United States vs. Romano, 382 U.S. 136, and United States Vs. Steward 451 F2d 1207. The government's issue that John Waters the petitioner and girlfriend Deborah Smith being in the presence of Rice and Brantley while they were negotiating narcotic transactions, and by the petitioner being in the bathroom of Rice's apartment where the government's agents had alleged they found a brown paperbag containing heroin was evidence to make petitioner a co-conspirator to Rice and Brantley. It was shown at trial that petitioner had not control over any heroin

transaction nor control over the brown paperbag that was alleged to contain heroin. Petitioner states that he had no knowledge of what was in Rice's bathroom or what was transpiring between Rice, Brantley and the government's agents until they arrested petitioner, and indicted petitioner for conspiracy with intent to possess and distribute narcotics. At trial the court gave an instruction to contructive possession, which at trial it was shown that petitioner didn't have physical possession, so the court instructed the jury on contructive possession. Petitioner states that his 5th ammendment right was violated when the District Court didn't comply with the authority stated herein. United States vs. Romano, 382 US 136. Presence is relevant and admissible evidence in a trial on possession charge; but absent from showing of the defendant's function, its connection with possession is too enuous to permit a reasonable inference of guilt.

In like United States vs. Waters, it was shown at trial that petitioner didn't have possession of the brown paperbag that was alledged to be containing heroin in it, nor did the arresting agents for the government have any dealings with the petitioner that was narcotic related. The District Court stated to the jury that petitioner didn't have physical possession, but the jury could de-

liberate on the constructive possession, United States vs. Steward 451 F2d 1207 at footnote (6). A recent case noted that contructive possession is found only where the defendent has set the price for the sale, or was able to assure delivery or had the final say as to means of transfer. In all of these cases in which we have upheld a finding of contructive possession at, not one of these indicia has been present. In like the United States vs. Waters, petitioner did not negotiate any narcotic deals with the government agents, petitioner never set a price to sell narcotics to the government agent, nor did petitioner ever assure the government agent that he would deliver narcotics to them or had any final say of transfer of narcotics to the government's agents. It is evident that Rice and Brantley were involved if viewed in light favorable to the government's case, but there was not any "Mens Rea" on the part of the petitioner.

III. TELEPHONE CALLS TO PETITIONER'S PLACE OF BUSINESS, AND TO PETITIONER'S GIRL-FRIENDS HOUSE BY ALLEGED CO-CONSPIRATOR IS THAT SUFFICIENT EVIDENCE TO MAKE PETITIONER A CO-CONSPIRATOR.

Petitioner states that phone calls made to his place of business and girlfriends house by Rice didn't make him co-conspirator to Rice, and by the government asking the jury to infer that, was a violation of petitioner's

5th ammendment right. United States vs. Leonard Cerda Barrera, 547 F2d 1256,57 footnote (13,14). United States vs. Cyril B. Fitzharris, 633 F2d 422 footnote (7), Petitioner states in like of United States vs. Waters. The government presented evidence that Rice had made phone calls to petitioner's place of business, which the phone at petitioner's place of business is a public phone. The court asked the jury to infer that the receiving party was petitioner. The government had tapes and recordings, but not one was the petitioner recorded talking to Rice, which the case at bar is parellel to United States vs. Leonardo Cerda Barrera, 547 F2d 1256,57 footnote (13,14), United States vs. Cyril B. Fitzharris, 633 F2d 422 footnote (7), so it can be inferred that Rice could have been talking to anyone other than the petitioner.

It was shown at trial that Rice had made calls to petitioner's girlfriend's house where petitioner lived, but there were no conversations or tapes at trial to verify that she was talking to petitioner, and most of all that there was conversation in reference to narcotic negotiations which the government has the burden of proving beyond a reasonable doubt that the calls were narcotic related, In Re Winsnip 397 US 358. The government had no taped conversations of petitioner and Rice negotiating narcotic

transactions, nor did Ms. Rice take the stand for the government and state that she and petitioner had talked narcotic transactions. The calls surrounding the government's case is just conjecture and suspicion, which a conviction can't stand on.

All the government showed by the calls was association, and association is not enough to make a co-conspirator. United States vs. Steward, 451 F2d 1203, United States vs. Terrell, 474 F2d 872, United States vs. Fitzharris, 633 F2d 416, United States vs. Barrera, 547 F2d 1250, United States vs. DeSimone, 660 F2d 532. Petitioner states that the government violated the statutory presumption clause. The narcotics that was allegedly found a couple of feet away from petitioner in a brown paperbag was never proven by the government to be placed there by petitioner. The testimoney given by agent Baker and Williams pertaining to where the narcotics was found was inconsistent with one another; which could be inferred that their testimoney was drummed up. Petitioner is not responsible for what was found on Ms. Rice's property unless the government can prove that petitioner put the brown paperbag containing narcotics in Ms. Rice's bathroom. The government did not state that they saw petitioner with possession of the brown paperbag that contained narcotics,

the government stated that the bag was in the bathroom where petitioner was. The legislature cannot constitutionally make one fact conclusive evidence of another one if the former is not, in and of itself, by virtue of its own force, conclusive. Accordingly, an irrebuttable or conclusive statutory presumption is ordinarily held unconstitutional. This applies to petitioner, it is a fact that a brown paperbag containing narcotics was found in the bathroom where the petitioner was using the commode, but it is not a fact that petitioner put it there. United States vs. Gainey, 380 63, United States vs. Romano 382 US 136. United States vs. Tot. 319 US 463, United States vs. Leary, 395 US 6, A criminal statutory presumption must be regarded as "irrational" or "arbitrary", and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend. Petitioner, John Waters states that the government's whole case is surrounded by conjecture, suspicion, and speculation, United States vs. Stroupe, 438 F2d 1063. The government's whole case is surrounded by hearsay testimony, and speculation. Rice nor Brantley never cooperated with agent Baker and agent Williams or any other agents testimoney

at trial, nor did the government have any tapes of petitioner having conversation with them or Rice and Brantley about narcotics, nor can the government say that Rice spoke to petitioner on January 11, 1980 when Rice and Brantley made narcotic transactions with agent Baker and agent Williams.

IV. WAS THE GOVERNMENT IN VIOLATION OF THE HEARSAY RULE BY SUBMITTING A STATEMENT BY AN ALLEGED CO-CONSPIRATOR WHICH PROVED TO BE INSUFFICIENT AND DID IT VIOALTE THE CONFRONTATION RIGHT OF THE PETITIONER.

Petitioner, John Waters states that the tapes and statements made by Brantley, Rice and Phillips to agent Williams should not have been admitted at trial against him, and by the government doing so violated petitioner's 5th ammendment right 801(c)(d)(E), and laws governed under the constitution. The government's agents testified at the trial that the co-conspirators that the agents dealt with mentioned petitioner as a supplier, yet none of the co-conspirators that dealt with the agents took the stand and cooperated with the agents testimony about the statements made in reference to petitioner. The tapes admitted at trial, should not have been admitted. The tapes were of the co-conspirators that dealt with the government agents, none of the tapes had the voice

of the petitioner on them, nor did the co-conspirators mention the petitioner's name during the course of conversation on any of the tapes admitted by the government. United States vs. Stroupe, 538 F3d 1063, United States vs. Gambino 108 F2d 140, and other cases at 801(c) 801(d), and 801(2)(E) under hearsay evidence.

Petitioner states that the government's whole case was based on nothing more than hearsay testimony, and speculation and that the conviction should be set aside.

V. IS PETITIONER'S SPECIAL PAROLE TERM IN ACCORDANCE TO 21 U.S.C. 841(a) FOR FIRST OFFENDERS

Petitioner states that the special parole extended to the petitioner's eight year sentence is excessive, and violates petitioner's 5th Ammendment Right.

Petitioner states at title 21 U.S.C. 841(a) any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

Petitioner states at the time of this trial and conviction, petitioner had no prior narcotic convictions.

Petitioner was sentenced to (8) years of imprisonment and (10) years of special parole to serve after the expiration of the (8) years of imprisonment sentence.

Petitioner states that the sentence handed down is in violation of title 21 U.S.C. 841(1)(a), it states for first offenders of narcotic violations there can be a special parole attached to the imprisonment sentence; which is three years. For second offenders or more a six year parole sentence may be attached to the imprisonment sentence.

Petitioner states that at the time of this conviction he was adjudged as a first offender narcotic violater, and the ten year special parole is seven years in excess to the requirements of 841(1) (a) at title 21 U.S.C. and that the special parole should be regulated to its requirements in the petitioner's case.

Conclusion

Petitioner states due to the evidences that was submitted at trial and precedents that has been handed down by this court, petitioner's conviction shall be overturned and set aside.

Date: May 27, 1983 John Waters

APPENDIX

United States District Court/Southern District of New York
Filed U.S. District Court September 14, 1982
Honorable Lee P. Gagliardi

United States Court of Appeals/Second Circuit
Filed U.S. Court of Appeals March 14, 1983
Present: Honorable Irving R. Kaufman
Honorable Amalya L. Kearse
Circuit Judges
Honorable Lloyd F. MacMahon
District Judge, sitting by designatio

United States Court of Appeals/Second Circuit
Filed April 12, 1983 Southern District of New York
Present: Honorable Irving R. Kaufman
Honorable Amalya L. Kearse
Circuit Judges
Honorable Lloyd F. MacMahon
District Judge, Sitting by designatio

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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JOHN WATERS,

Petitioner

-against-

UNITED STATES OF AMERICA,

Respondent.

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GAGLIARDI, D.J.

Petitioner John Waters, currently incarcerated at the Raybrook Correctional Institution, has moved this court pursuant to 28 U.S.C. § 2255 to vacate his conviction and set aside his sentence. After a jury trial before this court, petitioner was convicted on May 19, 1980 of conspiracy and possession of heroin with intent to distribute. The Second Circuit affirmed the conviction without opinion on November 7, 1980 and the Supreme Court denied certiorari on April 4, 1981. Petitioner now attacks the judgement of conviction on the following grounds: (1) that petitioner's mere presence at the scene of a single narcotics transaction is insufficient to support his convictions; (2) that the court erroneously permitted the introduction of co-conspirator declarations against petitioner; and (3) that the special parole term imposed on petitioner is excessive and contrary

to law. For the reasons set forth below, the petition is dismissed.

Petitioner's first and second claims were raised and rejected on his direct appeal to the Second Circuit.[1] This court is precluded from reconsidering matters decided adversely to petitioner on direct appeal unless there has been an intervening change in the law which would have exonerated petitioner if it had been in force before the conviction was affirmed on appeal. Chin v. United States, 622 F.2d 1090, 1092 (2d Cir. 1980), cert. denied, 450 U.S. 923 (1981). Since there has been no such change in the law applicable to this case, petitioner is not entitled to relief on his first and second claims.

Petitioner's third claim, that the special parole term imposed by the court was unlawful, is without merit. The applicable statute expressly authorizes the ten year special parole term that the court imposed upon petitioner on is conviction for possession of heroin with intent to distribute. See 21 U.S.C. § 841(a) and (b).

The petition is accordingly dismissed.

So Ordered.

Dated: New York, New York
September 13, 1982

FOOTNOTE

1. Although the instant petition, unlike petitioner's brief to the Second Circuit, makes reference to the Fifth and Fourtheenth Amendments, the arguments made here and those made to the Court of Appeals are in substance identical.

UNITED STATES COURT OF APPEALS
Second Circuit

At a stated Term of the United States Court of Appeals for the second circuit, held at the United States Courthouse in the City of New York, on the 14th day of March, one thousand nine hundred and eighty-three.

Present:

Honorable Irving R. Kaufman,

Honorable Amalya L. Kearse,

Circuit Judges.

Honorable Lloyd F. MacMahon

District Judge, sitting by designation.

JOHN WATERS,

Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was submitted.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgement of said District Court be and it hereby is affirmed.

1. Waters raises three claims in his challenge of Judge Gagliardi's denial of his petition to vacate the judgement of conviction pursuant to 28 U.S.C. § 2255. He asserts that the evidence introduced at trial was insufficient as a matter of law, that statements of his co-conspirators were improperly admitted against him, and that the ten year term of special parole imposed by the district judge was excessive and unlawful.

2. Water's first two claims were raised before the trial court and again on the direct appeal of his judgement of conviction. This Court rejected appellant's arguments, 636 F. 2d 1204 (2d Cir. 1980) (unpublished order), cert. denied, 450 U.S. 996 (1981) and Waters is precluded from raising them again in a collateral proceeding. "(I)t is well settled that

once a matter has been denied adversely to a defendant on direct appeal it cannot be relitigated on collateral attack." Cnin v. United States, 622 F. 2d 1090, 1092 (2d Cir. 1980) (quoting United States v. Natelli, 553 F.2d 5, 7 (2d Cir.), cert. denied, 434 U.S. 819 (1977)).

3. Waters' challenge to the special term of parole imposed by the district court is also without merit. In addition to his conviction for conspiracy to possess and distribute heroin, 21 U.S.C. § 846, Waters was found guilty of sale of heroin and possession with intent to sell, 21 U.S.C. § 841(a)(1). 21 U.S.C. § 841(b)(1)(A) authorizes a court to impose special parole on a defendant who is convicted of one of a number of specified offenses, including the substantive count of which Waters was found guilty. The statute authorizes parole to be imposed for a minimum of three years, and appellant's contention that his sentence of ten years on parole is unlawful is utterly without merit. Moreover, as long as the sentence is within the statutory maximu, it may not be challenged on appeal.

See United States v. Mennuti, 679 F. 2d 1032 (2d Cir. 1982).

4. Accordingly, the order of the district court denying Water's peition to vacate the judgement of conviction is affirmed.

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Irving R. Kaufman,

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Amalya L. Kearse,

Circuit Judges

_____

Lloyd F. MacMahon,

District Judge

Southern
82 Civ3809
Gagliardi

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Second Circuit

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Present:

Honorable Irving R. Kaufman,

Honorable Amalya L. Kearse,

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District Judge, sitting by designation.

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JOHN WATERS,

Petitioner-Appellant

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court for the Southern District of New York.

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1. Waters' raises three claims in his challenge of Judge Gagliardi's denial of his petition to vacate the judgement of conviction pursuant to 28 U.S.C. § 2255. He asserts that the evidence introduced at trial was insufficient as a matter of law, that statements of his co-conspirators were improperly admitted agains him, and that the ten year term of special parole imposed by the district judge was excessive and unlawful.

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4. Accordingly, the order of the district court denying Waters' petition to vacate the judgement of conviction is affirmed.

Irving R. Kaufman,

Amalya L. Kearse,
Circuit Judges,

Lloyd F. MacMahon
District Judge.

CLERK

CERTIFICATE OF SERVICE

I. John Waters, hereby certify that I have served a true and correct copy of the foregoing writ upon the Solicitor General of the United States by placing same in a sealed, postage-prepaid envelop addressed to Office of the Clerk Supreme Court of the United States of Washington, D.C. 20543, and depcsiting same in the United States mail at P.O. Box 900 Raybrook, New York 12977 on this 16 day of June 1983.

R. Roberts

John Waters